

Fair Political Practices Commission
MEMORANDUM

TO: Chairman Getman, Commissioners Downey, Knox, Scott and Swanson

FROM: C. Scott Tocher, Counsel, Legal Division
Luisa Menchaca, General Counsel

DATE: November 13, 2001

SUBJECT: Implementation of Proposition 34; Adoption of Regulations 18539 and 18550 – New Online/Electronic Disclosure Reports

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On November 7, 2000, the voters approved Proposition 34, which significantly amended the Political Reform Act (“Act”). Among other things, Proposition 34 established three new campaign disclosure reports that must be filed online or electronically with the Secretary of State. These include two 24-hour reports for contributions and independent expenditures made during an election cycle.

To implement the new reporting provisions, the Commission adopted at its June meeting two emergency regulations that specify the content of the electronic reports. These emergency regulations, 18539 and 18550, were allowed to expire by operation of law in October. Staff has redrafted the regulations and recommends the Commission adopt them on a permanent basis.

24-HOUR ONLINE DISCLOSURE OF CONTRIBUTIONS AND INDEPENDENT EXPENDITURES
MADE DURING AN ELECTION CYCLE

Government Code section 85309¹ requires 24-hour online or electronic reporting of contributions of \$1,000 or more received during an election cycle² by candidates for elective state offices and state ballot measure committees that must file their campaign disclosure reports electronically under section 84605. The content of the report is specified in section 84203, the current statute requiring 24-hour reporting of “late contributions.” Section 85309 also requires candidates for elective state office and ballot measure committees to file electronic reports of contributions of \$5,000 or more within 10 days of receipt if outside the election cycle.

Section 85500 requires 24-hour online or electronic reporting of independent expenditures of \$1,000 or more made during an election cycle to support or oppose a

¹ All statutory references are to the Government Code unless indicated otherwise.

² For purposes of section 85309, “election cycle” means the period of time commencing 90 days prior to an election and ending on the date of the election. (§ 85204.)

candidate for elective state office, which are made by committees that must file their campaign disclosure reports electronically under section 84605. The content of the report is specified in section 84204, the current statute requiring reporting of “late independent expenditures.”

Prior to passage of Proposition 34, the Act only required 24-hour reporting of “late contributions” and “late independent expenditures.” These reports are filed during the last 16 days prior to an election to inform the public about contributions and independent expenditures of \$1,000 or more made to support or oppose a candidate or measure being voted on in the election. The Act does not require that the late reports be filed on a particular form. For the convenience of filers, however, the Commission approved use of Form 496 – Late Independent Expenditure Report, and Form 497 – Late Contribution Report. In developing the Cal-ACCESS program, the Secretary of State used these forms for electronic disclosure of late contributions and late independent expenditures.

Because the electronic versions of the Forms 496 and 497 as referenced in Emergency regulations 18539 and 18550 do not as such exist, however, the Commission declined to adopt permanently the emergency regulations. Those regulations expired in October.

Pursuant to the Commission's direction, staff redrafted regulation 18539 and 18550. The current versions delete reference to the Forms E- 496 and E-497 and include optional language defining the content of the online forms. **The Commission's decisions are discussed as follows:**³

³ Some members of the Commission at the October meeting expressed concern about the filing duties imposed by these statutes when the triggering events occur on a Saturday or Sunday. Staff notes that regulation 18116 states:

"§ 18116. Reports and Statements; Filing Dates.

" Whenever the Political Reform Act requires that a statement or report be filed prior to or not later than a specified date or during or within a specified period, and the deadline falls on a Saturday, Sunday or official state holiday, the filing deadline for such a statement or report shall be extended to the next regular business day. This extension does not apply to late contribution reports required by Government Code Section 84203, late independent expenditure reports required by Government Code Section 84204, or notice by the contributor of a late in-kind contribution required by Government Code Section 84203.3."

The extension of time granted by regulation 18116 applies to filings made pursuant to sections 85309 and 85500 because these two statutes are not mentioned in the exception to the regulation. All other 24-hour contribution/expenditure reports are excepted from the time extension provided by the regulation. (See Reg. 18116, above, excepting sections 84203, 84204 and 84203.3.) The Commission may wish at a future point to consider amendment of regulation 18116 to ensure a consistent approach to the filing of 24-hour contribution/expenditure reports.

Decision 1. Specify Information to be Disclosed?

As stated above, the statutes already define the content of the reports by referring to sections 84203 and 84204, respectively. However, for the sake of simplicity, staff has included draft language in the regulations specifying the content of the reports that is prescribed by the statutes.

The Commission already has decided that reports filed pursuant to sections 85309 and 85500 are not required to be filed on paper.

If the Commission decides **not** to add language describing the content of the forms in the respective regulations, then only one regulation is needed for both 85309 and 85500. That is found in draft **regulation 18539, Option 1**.

If the Commission decides to describe the contents of the reports as required by sections 85309 and 85500 in the respective regulations, a separate regulation for each statute will be required. **Regulation 18550 and Option 2 of regulation 18539** set forth the requirements of the two statutes.

Decision 2. What to do with Activities Occurring the Day of the Election?

Sections 85309 and 85500 pertain to contributions and independent expenditures respectively received or made "during an election cycle." (§ 85309, subd. (a)., § 85500, subd. (a).) For purposes of these two statutes, "election cycle" means the period of time commencing 90 days prior to an election and ending on the date of the election. (§ 85204.) Under these statutes, if a triggering contribution or independent expenditure is made or received on the day of the election, it will not be disclosed electronically until the day after the election. Staff flagged the issue just prior to the deadline for notice to the Office of Administrative Law and, out of caution, drafted the optional language in subdivision (b) of 18539 and subdivision (c) of 18550. Upon further review and discussion, it is staff's conclusion that no problem is created by the statutes because the information is ultimately disclosed. Also, authority may be lacking for the language proposed because it requires same-day disclosures not covered by the statute. Therefore, in the event the Commission does not opt above in Decision One for the single-sentence regulation interpreting both 18539 and 18550, staff **recommends the Commission reject** subdivisions (b) and (c) of regulations 18539 and 18550, respectively.